



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI  
GOVERNOR

DAVID P. LITTELL  
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection

FROM: Jeffrey Kalinich, Bureau of Land & Water Quality, Portland

RE: Consent Agreement for Donald and Brenda Buteau

DATE: November 19, 2009

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**Statute and Rule Reference:** *The Natural Resources Protection Act*, 38 M.R.S.A. § 480-C, prohibits placing fill and constructing permanent structures in and adjacent to a great pond without first obtaining a permit from the Department.

**Location:** Harrison, Maine

**Description:** In September 2008, a staff inspection found that Donald and Brenda Buteau had placed crushed rock along the shore, constructed a gazebo and backfilled stone walls within 75 feet of Long Lake. No permits had first been obtained for these activities.

**Environmental Issues:** Great ponds are among the State's most sensitive protected natural resources. The cumulative impact of shoreline development and pollutants such as phosphorous entering this type of water body can diminish and destroy the characteristics of the resource. The addition of phosphorous to a great pond can lead to algae blooms. These blooms rob great ponds of oxygen in the lower depths of the lake and essentially eliminate cold water habitat necessary or the survival of cold water fish species. The discharge of soil materials and rocks adjacent and into a lake system also results in the short-term problems associated with erosion and sedimentation as well as the obvious permanent loss of habitat.

The Buteaus have completed a partial restoration acceptable to Department staff to remove the rock fill in and adjacent to the lake. The Buteaus are also pursuing after-the-fact approval of the construction of the structures and have agreed to restore the area to staff satisfaction should Department approvals not be obtained. No long term impact to the lake is anticipated.

**Department Recommendation:** The Department recommends acceptance of this Consent Agreement stipulating that Donald and Brenda Buteau pay a monetary penalty of \$2,534.00, which has been paid. The Agreement also requires the removal of the stone fill, which has been done to staff's satisfaction. The Buteaus have filed an application for after-the-fact approval of the gazebo, stone walls and other alterations which is currently under review. If the application is denied in whole or in part, restoration of all unapproved activities will be done in accordance with a restoration plan.

The penalty is based on the Department's penalty policy reflecting the size of the violation, knowledge of the violator, and that the violation could have been avoided.

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IN THE MATTER OF:

**DONALD R. BUTEAU**  
**BRENDA L. BUTEAU**  
**AUBURN, ANDROSCOGGIN, MAINE**  
**NRPA**  
**2008-155-L**

) **ADMINISTRATIVE CONSENT**  
) **AGREEMENT**  
) **(38 M.R.S.A. § 347-A)**  
)

This Agreement by and among Donald R. Buteau, Brenda L. Buteau, the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M.R.S.A. § 347-A(1).

The parties agree as follows:

- 1) Donald R. Buteau and Brenda L. Buteau, 35 Parfour Drive, Auburn, Maine, own a parcel of land on Cape Monday Road in Harrison, Maine as described and recorded in Book 12006 on Page 120 of the Cumberland County Registry of Deeds.
- 2) The property described in Paragraph 1 of this Agreement abuts Long Lake which is a great pond as defined by the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-B(5).
- 3) On September 18, 2008, an inspection of the property described in Paragraph 1 of this Agreement by Department staff revealed that soil was disturbed and a gazebo, patio area and walls were being constructed within 75 feet of the normal high water line of Long Lake. It was also observed that rock fill had been placed adjacent to and in Long Lake. Neither Donald R. Buteau nor Brenda L. Buteau first obtained a permit from the Department for these activities. At the time of inspection, erosion controls were in place and sedimentation to the lake was not visible.
- 4) The activities described in Paragraph 3 of this Agreement constitute the following violations:
  - A) By performing or causing to be performed construction of a permanent structure adjacent to a great pond without first obtaining a permit from the Department, Donald R. Buteau and Brenda L. Buteau violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.
  - B) By filling, or causing filling, and disturbing, or causing disturbance of, soil adjacent to a great pond without first obtaining a permit from the Department, Donald R. Buteau and Brenda L. Buteau violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.

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IN THE MATTER OF:

DONALD R. BUTEAU

BRENDA L. BUTEAU

AUBURN, ANDROSCOGGIN, MAINE

NRPA

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- C) By filling or causing to be filled a great pond without first obtaining a permit from the Department, Donald R. Buteau and Brenda L. Buteau violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.
- 5) On September 23, 2008, the Department issued a Notice of Violation to Donald R. Buteau and Brenda L. Buteau regarding the violations described in Paragraphs 3 and 4 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).
- 6) The Department has regulatory authority over the activities described herein.
- 7) Pursuant to 38 M.R.S.A. §§ 341-D(6)(C) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection (the "Board") which is part of the Department.
- 8) This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.
- 9) To resolve the violations referred to in Paragraphs 3 and 4 of this Agreement, Donald R. Buteau and Brenda L. Buteau agree to:
- A) No later than August 21, 2009, submit an acceptable after-the-fact individual Natural Resources Protection Act permit application, acceptable for processing, for the wall along the lake shore, the gazebo and all other alterations to the residential structure, the wall replacement adjacent to the residential structure and all soil disturbance and filling activities within 75 feet of Long Lake.
- If the after-the-fact application is approved by the Department, immediately comply with all terms and conditions of the after-the-fact permit; or
- If the after-the-fact permit is wholly or in part denied, returned, withdrawn, or not submitted, within 30 days of denial, return, withdrawal, or the submission deadline, submit a final restoration plan to the Department to restore all unpermissible activities to their previously existing condition. The final restoration plan is subject to review and approval by Department staff and must include a specific time schedule for the completion of all phases of the restoration. Implement the approved plan in accordance with the schedule contained therein.
- B) No later than August 15, 2009, remove any remaining rocks and stone placed adjacent to Long Lake to the Department's satisfaction and complete the Revised Planting Plan for the Buteau property in Harrison, Maine dated June 22 and June 23, 2009 to the Department's satisfaction. Upon completing the restoration, install and maintain erosion controls until permitted work, or final restoration, is completed.

## IN THE MATTER OF:

DONALD R. BUTEAU

BRENDA L. BUTEAU

AUBURN, ANDROSCOGGIN, MAINE

NRPA

2008-155-L

) ADMINISTRATIVE CONSENT  
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) (38 M.R.S.A. § 347-A)

- C) Pay to the Treasurer, State of Maine, upon demand by the Department, the sum of one hundred dollars (\$100.00) per day per violation for the violation of any provision of this Agreement.
- D) Pay the Treasurer, State of Maine, upon signing this Agreement, the sum of two thousand five hundred thirty-four dollars (\$2,534.00) as a civil monetary penalty.
- 10) The Department and the Office of the Attorney General grant a release of their causes of action against Donald R. Buteau and Brenda L. Buteau for the specific violations listed in Paragraphs 3 and 4 of this Agreement on the express condition that all actions listed in Paragraph 9 of this Agreement are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until this condition is satisfied.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of three (3) pages.

DONALD R. BUTEAU

BY: 

DONALD R. BUTEAU

DATE: 8/24/09

BRENDA L. BUTEAU

BY: 

BRENDA L. BUTEAU

DATE: 8/24/09

BOARD OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_

SUSAN M. LESSARD, CHAIR

DATE: \_\_\_\_\_

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: \_\_\_\_\_

MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL

DATE: \_\_\_\_\_

